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Letter dated 28 October 2016 from the Secretary-General addressed to the President of the Security Council

Pursuant to Security Council resolution 1031 (1995), I have the honour to transmit the fiftieth report on the implementation of the Peace Agreement on Bosnia and Herzegovina, covering the period from 16 April to 21 October 2016, which I received from the High Representative for Bosnia and Herzegovina (see annex). Also included is a special report on a referendum in Republika Srpska against Decisions of the Constitutional Court of Bosnia and Herzegovina (see enclosure).

I would be grateful if you could bring these reports to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

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Annex

Letter dated 21 October 2016 from the High Representative for Bosnia and Herzegovina addressed to the Secretary-General

Pursuant to Security Council resolution 1031 (1995), in which the Council requested the Secretary-General to submit to the Council reports from the High Representative in accordance with annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Conclusions of the London Peace Implementation Conference of 8 and 9 December 1995, I herewith present to you the fiftieth report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina. I would ask that the report be distributed to the members of the Council for their consideration.

This is my sixteenth regular report to the Secretary-General since I assumed the post of High Representative for Bosnia and Herzegovina and European Union Special Representative on 26 March 2009. The present report covers the period from 16 April 2016 to 21 October 2016.

In addition, I am submitting a special report on developments surrounding the organization and conduct of a referendum in the Republika Srpska, which I have assessed to be in violation of the terms of the General Framework Agreement for Peace in Bosnia and Herzegovina and cause for the special consideration of the Council.

Should you or a member of the Security Council require any information beyond what is provided in the attached report or have any questions regarding its contents, I should be pleased to provide you with that information.

(*Signed*) Valentin **Inzko**

Fiftieth report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina

Summary

The present report covers the period from 16 April to 21 October 2016. The key challenge during this period was the conduct of a referendum by the Republika Srpska authorities in September against two decisions of the Constitutional Court of Bosnia and Herzegovina on the celebration of "Republika Srpska Day". While a referendum regarding entity holidays may be within the competence of an individual entity, any referendum must be conducted in a way that is consistent with the Constitution of Bosnia and Herzegovina, and cannot violate the General Framework Agreement for Peace in Bosnia and Herzegovina or the constitutional framework of Bosnia and Herzegovina.

The Republika Srpska referendum conducted in September violated two final and binding decisions of the Constitutional Court of Bosnia and Herzegovina: a decision of 26 November 2015 which deemed the designation of 9 January as "Republika Srpska Day" to be unconstitutional and a decision of 17 September 2016 directly ordering the Republika Srpska authorities not to implement the decision of the Republika Srpska National Assembly regarding the referendum. The conduct of a referendum by the Republika Srpska authorities thus represents a violation of the General Framework Agreement for Peace, since, under the Constitution, as set forth in annex 4 to the General Framework Agreement, decisions of the Constitutional Court are "final and binding".

In holding the referendum against a direct order of the Constitutional Court of Bosnia and Herzegovina, the Republika Srpska authorities pursued activities which signal that they do not consider decisions of the State-level judiciary to apply in the Republika Srpska when it does not suit them. I am concerned about the implications of these developments for peace and stability, in particular should the Republika Srpska authorities proceed with a referendum on the "status" of the entity or secession, as the entity's governing party has threatened to do in 2018. Owing to the gravity of the situation surrounding the Republika Srpska referendum and the serious challenges to the Constitution of Bosnia and Herzegovina and the General Framework Agreement for Peace that it represents, I have submitted a separate special report on the referendum and related challenges to the rule of law.

The publication of the results of the 2013 census in June, although significantly delayed, was a landmark achievement during the reporting period, given the fact that the previous census was held in 1991, before the war. However, disagreement over the statistical methodology for processing of results sparked a political dispute in which Republika Srpska authorities and their representatives sought to exclude persons working or studying abroad from resident population figures. The decision of the Bosnia and Herzegovina Agency for Statistics to adopt the data processing program and publish the 2013 census results, while taken in accordance with applicable legislation, was disputed by the Republika Srpska, which adopted a law to

unilaterally determine its own methodology for the processing of data and to publish its own, competing version of the results.

The bright spot in political developments over the last six months has undoubtedly been the decision by the European Union General Affairs Council on 20 September inviting the European Commission to submit an opinion on the application by Bosnia and Herzegovina for membership of the European Union. This followed the adaptation of the Stabilization and Association Agreement on 18 July and the adoption of the European Union coordination mechanism on 23 August. The European Union also welcomed the progress made by the Bosnia and Herzegovina authorities in implementing the Reform Agenda for Bosnia and Herzegovina 2015-2018 and invited them to continue their efforts to the benefit of their citizens. The agenda includes socioeconomic, rule of law and public administration reforms.

Similarly, after significant delays in negotiations due to the controversy over the publication of census results, the authorities in Bosnia and Herzegovina eventually agreed to a set of reform measures with the International Monetary Fund (IMF), which enabled the country to reach an arrangement with IMF amounting to EUR 553.3 million in loans over three years.

These positive developments were overshadowed by a marked increase in divisive nationalist rhetoric fuelled by the referendum, including renewed statements by officials from the Republika Srpska challenging the sovereignty and territorial integrity of Bosnia and Herzegovina and referring to the future dissolution of the country, as well as strong reactions from some Bosniak officials to the referendum, including references to the potential for a return to conflict. Under the authority vested in me under annex 10 of the General Framework Agreement for Peace, I use the present report to reiterate that the entities have no right to secede from Bosnia and Herzegovina and that the sovereignty and territorial integrity of Bosnia and Herzegovina and the constitutional position of the entities are guaranteed by the General Framework Agreement.

On 2 October, citizens of Bosnia and Herzegovina voted in the country's sixth local elections since the war. In the currently polarized political environment, the main electoral victors appear to be those parties who, in their rhetoric, have emphasized the perceived interests of one of the three principal ethnic groups over more practical issues. While the conduct of elections was largely peaceful, electoral irregularities and unrest in the town of Stolac resulted in a suspension of the vote, which will need to be repeated. And in Srebrenica, the town known as the site of the genocide in 1995, disputes over the final count are ongoing. Finally, in Mostar, citizens were again unable to participate in elections owing to the failure of local political parties to agree on needed changes to the Election Law. All of these areas will require close attention from the international community in the coming period to improve inter-ethnic relations on the ground.

I. Introduction

1. This is my sixteenth periodic report to the Secretary-General since I assumed the post of High Representative for Bosnia and Herzegovina in 2009. It provides a narrative description of progress made towards attaining goals outlined in previous reports, registers factual developments, logs citations relevant to the reporting period, and provides my impartial assessment of the implementation in key areas falling under my mandate. I have focused my efforts on addressing these areas, in line with my responsibility to uphold the civilian aspects of the General Framework Agreement for Peace in Bosnia and Herzegovina. In this respect, I have consistently encouraged the authorities of Bosnia and Herzegovina to achieve progress on the five objectives and two conditions necessary for the closure of the Office of the High Representative for the Implementation of the Peace Agreement on Bosnia and Herzegovina, and have worked to preserve measures that have been taken previously to implement the General Framework Agreement.

2. My energies continue to be directed towards meeting my mandate, as defined under annex 10 of the General Framework Agreement for Peace and relevant resolutions of the Security Council. Additionally, my Office fully supports the efforts of the European Union and the North Atlantic Treaty Organization (NATO) to assist Bosnia and Herzegovina in moving towards closer integration with those bodies.

II. Political update

A. General political environment

3. The general political environment in Bosnia and Herzegovina has deteriorated. While the country continues to take steps towards integration into the European Union, as evidenced by the acceptance by the Council of the European Union in September of the application by Bosnia and Herzegovina for membership of the European Union, nearly every step forward has carried a heavy political price and has often resulted in further disagreement, most frequently along ethnic lines.

4. In May, when the Bosnia and Herzegovina Agency for Statistics finally decided on a single methodology for processing data collected in the 2013 census — after more than two years of trying to reach agreement on the methodology with the entity statistical bodies under the auspices of the Bosnia and Herzegovina Central Census Bureau — Republika Srpska authorities rejected the selected methodology outright. As noted above, the decision on methodology for census data processing was subsequently challenged before the Constitutional Court of Bosnia and Herzegovina.

5. On 21 June, the Republika Srpska National Assembly formally rejected the decision of the Bosnia and Herzegovina Agency for Statistics and threatened to withdraw Republika Srpska institutions and personnel from the Bosnia and Herzegovina Central Census Bureau. The President of the Republika Srpska, Milorad Dodik, and other Republika Srpska politicians also conditioned entity agreement on the adaptation of the European Union Stabilization and Association Agreement and the adoption of the European Union coordination mechanism —

both preconditions for a positive evaluation of the membership application by Bosnia and Herzegovina — with a new agreement on the census data processing methodology.

6. On 13 July, the Republika Srpska National Assembly adopted the Republika Srpska Law on Publishing Census Results, with the aim to publish 2013 census data separately and unilaterally for the territory of the Republika Srpska according to a different methodology. The law was published on 23 September and entered into force on 1 October. It conflicts with the Bosnia and Herzegovina Census Law, according to which the Republika Srpska Institute of Statistics was to have published by 1 July the unified census data according to the methodology decided by the Bosnia and Herzegovina Agency for Statistics in May. Moreover, the Bosnia and Herzegovina Census Law and the decision of the Bosnia and Herzegovina Statistic Agency represent "decisions of the institutions of Bosnia and Herzegovina" within the meaning of article III.3 (b) of the Constitution of Bosnia and Herzegovina, so the entities are therefore bound to comply with them. In its final assessment of the census, the International Monitoring Operation for the 2013 Population and Housing Census in Bosnia and Herzegovina concluded that "the census results are in general considered valid and useful for economic and social planning".

7. Further contributing to the rising tension was the decision of 15 July of the Republika Srpska National Assembly to organize, on 25 September (one week before municipal elections in Bosnia and Herzegovina), a Republika Srpska-wide referendum on whether to support 9 January as "Republika Srpska Day". The Republika Srpska referendum was announced on an issue which had already been adjudicated by the Constitutional Court of Bosnia and Herzegovina and was therefore unconstitutional. Reacting negatively to criticism, Republika Srpska authorities promised even more referendums, including the previously announced but abandoned Republika Srpska referendum on the Bosnia and Herzegovina judiciary and authority of the High Representative, on the NATO membership of Bosnia and Herzegovina and even on secession of the Republika Srpska.

8. Despite two statements from the Steering Board of the Peace Implementation Council (with the exception of the Russian Federation) urging the Republika Srpska not to hold the referendum, as well as the strong position of neighbouring Croatia against the referendum as "destabilizing" and lack of support from Serbia, Republika Srpska authorities moved forward, ultimately in direct contravention of the interim measure of 17 September of the Constitutional Court of Bosnia and Herzegovina suspending the referendum decision of the Republika Srpska National Assembly. Fortunately, there were no incidents during the conduct of the 25 September referendum, but the blatant act of rejecting the authority and the order of the Constitutional Court has soured the political atmosphere.

9. In the midst of the run-up to the Republika Srpska referendum, the Croat Member of the Bosnia and Herzegovina Presidency, Dragan Čović, addressed a letter to the Steering Board of the Peace Implementation Council, describing his views on the supposed representational inequality faced by Croats in Bosnia and Herzegovina, particularly in the Federation of Bosnia and Herzegovina, and proposing models for the reorganization of Bosnia and Herzegovina, including the territorial reorganization of the Federation. Five days after sending the letter, he

participated in public events marking the twenty-third anniversary of the founding of the wartime "Croatian Republic of Herzeg-Bosnia".

10. Bosnia and Herzegovina conducted local elections on 2 October, which in large measure passed off peacefully. While the final results are yet to be published at the time of writing, as mentioned above, the three main nationalist political parties, the Party of Democratic Action (SDA), the Croatian Democratic Union of Bosnia and Herzegovina (HDZ Bosnia and Herzegovina) and the Alliance of Independent Social Democrats (SNSD) were the main victors. SNSD did particularly well, defeating the Republika Srpska opposition and, with its coalition partners, effectively took control of nearly two thirds of municipalities in the Republika Srpska.

11. As noted above, citizens from the city of Mostar were unable to participate in the local elections cycle for the second time in a row, owing to the failure of the political parties responsible (primarily SDA and HDZ Bosnia and Herzegovina) to implement the ruling of 2010 by the Constitutional Court of Bosnia and Herzegovina on Mostar's electoral system.

12. The local elections saw one inter-ethnic incident, in Stolac, in the Federation, where a physical confrontation between the Bosniak mayoral candidate and the Croat president of the Municipal Election Commission over alleged voting irregularities and polling station manipulation resulted in the Central Election Commission of Bosnia and Herzegovina suspending the elections in Stolac municipality until further notice.

13. Against such a backdrop, the achievements of Bosnia and Herzegovina during the period, while limited, are perhaps even more remarkable. Following significant political wrangling, Bosnia and Herzegovina and the European Union initialled the Protocol on the adaptation of the Stabilization and Association Agreement on 18 July, and the Bosnia and Herzegovina Council of Ministers adopted a decision on the European Union coordination mechanism on 23 August. These two developments cleared the way for the decision of the General Affairs Council of the European Union on 20 September inviting the European Commission to submit an opinion on the application by Bosnia and Herzegovina for European Union membership, giving the green light for the next step, providing Bosnia and Herzegovina with the European Union questionnaire.

14. Ruling coalitions at the State and entity levels remained intact during the reporting period, but a rift between SDA and HDZ Bosnia and Herzegovina in the Federation halted work in both houses of the Federation Parliament until mid-October.

B. Decisions of the High Representative during the reporting period

15. Despite serious challenges to the constitutional order of Bosnia and Herzegovina and the General Framework Agreement for Peace during the reporting period, I continued to refrain from using my executive powers, in line with the policy of the Steering Board of the Peace Implementation Council policy of emphasizing "local ownership" over international decision-making.

C. Five objectives and two conditions for closure of the Office of the High Representative

Progress on objectives

16. Over the last six months, the Bosnia and Herzegovina authorities have made limited progress towards meeting the requirements of the 5 plus 2 agenda set by the Steering Board of the Peace Implementation Council as necessary for the closure of the Office of the High Representative.

Defence property and State property

17. The term "prospective defence property" refers to a defined list of immovable assets which are needed by the Armed Forces of Bosnia and Herzegovina and should be registered to the Bosnia and Herzegovina State in line with the Agreement on Succession Issues, the Bosnia and Herzegovina Law on Defence and relevant Bosnia and Herzegovina Presidency decisions. In addition to being part of the conditionality for the participation of Bosnia and Herzegovina in the NATO Membership Action Plan, progress on this issue is one of the outstanding objectives set as a prerequisite for the closure of the Office of the High Representative.

18. The process of registering prospective defence property under the ownership of the Bosnia and Herzegovina State continued during the reporting period, but only in relation to defence properties located on Federation territory. To date, 24 prospective defence property locations in the Federation have been successfully registered, while almost 20 others are in the process of registration. In recent months there has been a slowdown in completing the registration of properties located in the Federation, primarily due to technical legal problems.

19. The registration process for prospective defence property located on the territory of Republika Srpska remains completely blocked, with several requests by the State authorities for registration of properties rejected by Republika Srpska cadastral authorities on account of the alleged "non-existence of a valid legal basis". In one of these cases, a significant development occurred on 27 July, when the Appellate Division of the Court of Bosnia and Herzegovina decided in the second instance that the State of Bosnia and Herzegovina has the right of ownership of the prospective defence location "Veliki Zep" in Han Pijesak and ordered the Republika Srpska Administration for Geodetic and Property-Related Legal Affairs to register the ownership of the property to the State of Bosnia and Herzegovina. The judgment stipulates that the Republika Srpska shall meet all obligations stemming from the judgment within 30 days of its receipt.

20. In response to this decision, the Republika Srpska Attorney's Office announced that it would request a revision of the decision of the Constitutional Court of Bosnia and Herzegovina, and file an appeal with the Constitutional Court asking for the implementation of the decision to be put on hold until the Court reaches a decision on the requested revision. Since the regular appeals procedures have been exhausted in this case, it is worth noting that the use of these extraordinary legal remedies, per se, does not stay the enforcement of a final judgment. In the meantime, the President of the Republika Srpska, Milorad Dodik, has said clearly in public statements that he will order the relevant authorities in the

Republika Srpska not to comply with this final and binding decision of the Constitutional Court.[1]

21. A resolution of the broader question of how all other publicly owned assets are to be apportioned among the levels of government (State property) remains elusive. As previously reported, in March 2016 the Bosnia and Herzegovina House of Representatives adopted a conclusion requiring the Bosnia and Herzegovina Council of Ministers to prepare a draft law on the use and management of State property for entry into parliamentary procedure no later than the end of 2016. Work continues on that legislation.

Fiscal sustainability

22. The Office of the High Representative continued to follow, analyse and inform international partners on developments related to fiscal sustainability, including developments in the Bosnia and Herzegovina Fiscal Council and the Governing Board of the Bosnia and Herzegovina Indirect Taxation Authority.

23. The Bosnia and Herzegovina Fiscal Council met in May to adopt the Global Framework of Fiscal Balance and Policies for 2017-2019 as the basis for 2017 budget preparations.

24. The Governing Board of the Bosnia and Herzegovina Indirect Taxation Authority met in May, July and September, during which the Bosnia and Herzegovina State and entity ministers of finance continued the practice of discussing and agreeing on agenda issues in advance, thereby bypassing other Board members and narrowing the role of the Board. This resulted in numerous issues being removed from the agenda, including the coefficients for the second quarter of 2016, long-outstanding debt settlements between the entities and the resulting entity lawsuits against the Authority. The Board focused primarily on technical issues within its mandate, with the exception of the adoption on 11 July of the Decision on Temporary Coefficients for the Allocation of Single Account Revenue for July-September 2016, which showed a 0.25 per cent increase for the Federation and a corresponding decrease for the Republika Srpska over the previously applicable coefficients.

25. On 12 May, the Governing Board of the Indirect Taxation Authority convened in its capacity as the selection committee for the appointment of the director of the Authority. On the basis of the Board's recommendation, on 6 June, the Bosnia and Herzegovina Council of Ministers reappointed Miro Dzakula for another four-year term as director of the Authority.

Brcko District

26. On 8 June, after nearly two years of intensive engagement by my Office, the Brcko District Assembly adopted four key pieces of financial legislation (the Law on Fiscal Systems, the Law on Accounting and Auditing, the Law on Foreign Currency Operations and amendments to the Law on Payment Transactions). The

[1] "The Republika Srpska National Assembly will decide on this matter very soon and I, as the Republika Srpska President, will issue an order not to register this because there are no grounds for it." Republika Srpska President Milorad Dodik, *EuroBlic*, 6 September 2016.

adopted legislation will further integrate the Brcko District into the legal system of Bosnia and Herzegovina, facilitate implementation of the Bosnia and Herzegovina economic programme negotiated with IMF and empower the District with instruments for increasing fiscal transparency, fighting the grey economy and generating revenues. Throughout this period, the Office of the High Representative assisted the Brcko District legislative and executive authorities as well as the Finance Directorate and will continue to do so, at the request of the District, with a focus on implementing the adopted legislation.

27. On 6 July, the Brcko District Basic Court confirmed the indictment of 30 June against the Head of the Department for Spatial Planning and Legal-Property Affairs of the Brcko government, who is also president of the Party for a Better Future (SBB) political party in Brcko. He was previously sentenced for similar offences, and in 2007 he was removed from a Brcko District Government position (and later "rehabilitated") by order of the Brcko District Supervisor.

28. Owing to a protracted political crisis in the Brcko District authority, the 2016 Brcko District budget was not adopted on schedule, leaving the District institutions to operate under a temporary financing decision. Temporary financing is restrictive in both the amount and the use of revenue and thus threatened to affect the ability of the District institutions to meet their legal obligations. In early August, the Brcko District Supervisor reminded Brcko District authorities that further delay in adopting the budget could affect the ability of the District to meet certain obligations, including the allocation of budget revenues to the Brcko District Election Commission for the holding of the October local elections. After this the Brcko District Assembly finally adopted the 2016 budget.

29. Although the decision on *Amendments to the Decision on Protection of Civilian Victims of War* entered into force on 18 June 2015, correcting discriminatory provisions for the victims of rape and sexual abuse in Brcko, the decision has thus far not been implemented.

30. In August, responding to a request from the mayor of Brcko, the Supervisor informed the Brcko authorities that he would not allow the 25 September referendum to be held on the territory of the District, pursuant to a 2007 Supervisory Order requiring the Supervisor's approval for any referendums in the District.

Entrenching the rule of law

31. During the reporting period, my Office continued to provide support to the Bosnia and Herzegovina Ministry of Security in the implementation of the newly adopted Bosnia and Herzegovina Law on Foreigners and the Bosnia and Herzegovina Law on Asylum, including assistance in the development of rulebooks necessary for implementing this legislation.

D. Challenges to the General Framework Agreement for Peace

Challenges to the sovereignty and territorial integrity of Bosnia and Herzegovina

32. During the reporting period, there were numerous statements made which challenged the territorial integrity of Bosnia and Herzegovina, primarily by officials

from SNSD, the ruling party in the Republika Srpska. The President of the Republika Srpska, Milorad Dodik, who is also the leader of SNSD, continued to be the most frequent and vocal exponent of the dissolution of Bosnia and Herzegovina. President Dodik made various public statements in which he claimed, incorrectly, that the Republika Srpska is already a State,[2] and that Bosnia and Herzegovina is not a State.[3] He called for the future independence of the Republika Srpska,[4] about which the Vice-President of SNSD Nebojsa Radmanovic also speculated.[5]

33. As political tensions surrounding the Republika Srpska referendum rose, the head of a small Bosniak party and former wartime general, Sefer Halilović, threatened a return to conflict should the referendum be held and secession of the Republika Srpska pursued.[6]

Redrawing of internal boundaries

34. Croat leaders also revived the notion of the former Croatian Republic of Herzeg-Bosnia,[7] a wartime para-state, and proposed as a possibility the division of

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[2] "Republika Srpska is a State, brought into the Dayton Agreement. I was taught in school that there are three criteria for something to be called a State: territory, effective government on the whole territory, and people who want this State. So what of this does the Republika Srpska lack? Nothing." Republika Srpska President Milorad Dodik, post-Republika Srpska referendum rally in Pale, 25 September 2016.

[3] "I agree with (Serb Member of the Bosnia and Herzegovina Presidency Mladen) Ivanic when he says that January 9 should be called Republika Srpska Statehood Day. We will do it very quickly, we will adjust because the Republika Srpska is more a State than Bosnia and Herzegovina. We will find a new name — 9 January, Republika Srpska Independence Day." Republika Srpska President Milorad Dodik, RTRS, 20 September 2016.

[4] "Nobody is excluding that option (of an independence referendum). Not us, not them. It is an absolutely legitimate political topic that can be discussed. It is not on the agenda now, but it is something that, in political terms and terms of principles, should not be excluded in the future." Republika Srpska President Milorad Dodik, Sputniknews.com, 21 July 2016.

[5] "The independence referendum does not have to be in 2018, as SNSD said in its (April 2015) congress, but it can be then. Many things can be changed, but it should not be hidden that the people think they should not be living in this kind of Bosnia and Herzegovina. However, it is possible that meanwhile some things improve, that the High Representative departs, that all decisions that he issued go out of force. When Bosnia and Herzegovina functions according to the original Dayton, there will not be a reason for the referendum." SNSD Vice-President Nebojsa Radmanovic, *Nedeljnik*, 16 September 2016.

[6] "If with this referendum ... if they go forward with it and finish the story to the end and unwrap this referendum, then he needs to know, the public needs to know that from that day Dayton Bosnia and Herzegovina does not exist and legally we return to the Republic of Bosnia and Herzegovina ... On the other hand, citizens need to know that on the territory of Bosnia and Herzegovina there is no longer the Jugoslav People's Army ... that Serbia can't help anymore ... and that the Republika Srpska in its parameters could be maintained for only 10 to 15 days in a conflict. My plea is that it is better to talk for a hundred years than to go to war for one day. If they put us in a situation that they secede from Bosnia and Herzegovina, they should know that it won't pass peacefully." Sefer Halilovic, TV1, September 19, 2016.

[7] "The Croatian Republic of Herzeg-Bosnia was not terminated or abandoned. Having in mind the condition of the State of Bosnia and Herzegovina and everything that goes on today, both on the part of political Sarajevo and on the part of Banja Luka, Herzeg-Bosnia is of bigger importance today than it was in the last 20 years. After all, Herzeg-Bosnia still lives in many laws and public companies. Furthermore, all laws of the Croatian Republic of Herzeg-Bosnia are still in force for all those areas that are not regulated at the State level." Croatian People's Assembly Main Board President Bozo Ljubic (HDZ Bosnia and Herzegovina), speech in Grude, 28 August 2016.

the country into three or more federal units on the basis of the majority populations of each of the three constituent peoples, or the "territorial reorganization" of the Federation.[8]

Republika Srpska referendum on 9 January as the "Republika Srpska Day" holiday

35. As previously noted, on 15 July, the Republika Srpska National Assembly adopted a decision to hold a referendum in the Republika Srpska on 25 September concerning the support for 9 January as the "Republika Srpska Day" holiday, directly challenging a final and binding decision of the Constitutional Court of Bosnia and Herzegovina, with political and legal consequences detrimental to the stability of Bosnia and Herzegovina. On 25 September, the Republika Srpska authorities held the referendum against a second decision of the Constitutional Court, an interim measure suspending the decision of 15 July of the Republika Srpska National Assembly and effectively ordering the referendum not to be held until the court could assess its constitutionality. For more detailed information, please refer to my special report on a referendum in Republika Srpska against decisions of the Constitutional Court of Bosnia and Herzegovina (see enclosure).

Issue of foreign fighters

36. According to available information during the reporting period, the Bosnia and Herzegovina Court sentenced seven individuals to one year of imprisonment for joining or attempting to join the Islamic State of Iraq and Levant (ISIL). In six cases the sentences followed guilty plea agreements reached between the accused and the Bosnia and Herzegovina Prosecutor's Office, by which the perpetrators admitted that they had left or planned to leave Bosnia and Herzegovina with the aim of joining ISIL, despite knowledge of the 30 May 2013 press release of the Security Council indicating that the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities had approved the listing of ISIL as a terrorist organization.

Inter-ethnic election-related incidents

37. In the southern town of Stolac, electoral irregularities and unrest occurred at a number of polling stations, where the Bosniak SDA and the Croat HDZ Bosnia and Herzegovina parties are vying for control of the municipality. A Bosniak mayoral candidate confronted the Croat president of the municipal election commission over alleged complicity in voter fraud, which resulted in a physical altercation. While details of the incident remain unclear, it was disruptive enough for the police to intervene. The Central Election Commission of Bosnia and Herzegovina suspended the electoral process, which will need to be repeated.

38. In Srebrenica, an eastern municipality known for the genocide perpetrated against Bosniaks during the war, supporters celebrating the apparent victory of the Serb mayoral candidate came into verbal conflict with a group of supporters of the

[8] "However, equality can be achieved in different ways and through different models. One is an internal territorial reorganization of the Federation of Bosnia and Herzegovina." Croat Bosnia and Herzegovina Presidency Member/HDZ Bosnia and Herzegovina President Dragan Čović, letter to the High Representative and the Steering Board of the Peace Implementation Council, 23 August 2016.

Bosniak candidate near his political headquarters. Local police intervened and prevented any serious incident. Possible irregularities concerning ballot materials in a handful of polling stations further raised tensions and sparked rumours that the election was being "fixed" in favour of the Bosniak mayoral candidate, resulting in other minor security incidents. On 4 October, upon the receipt of a report that the election material had allegedly been tampered with, the Republika Srpska Ministry of the Interior sent a support unit to assist the local police in checking these reports. This move by the police, as well as the reports misnaming them as "special police" entering the municipal building in Srebrenica, added to the raising of tensions. The SDA and Bosniak victims associations have called for the annulment of the election results.

III. State-level institutions of Bosnia and Herzegovina

A. Bosnia and Herzegovina Presidency

39. Larger political controversies during the reporting period surrounding the publication of the 2013 census results, agreement on a European Union coordination mechanism and the Republika Srpska referendum, led to political disagreements within the Bosnia and Herzegovina Presidency. However, the Presidency still held six regular and one urgent session during the reporting period, and managed to adopt a number of significant decisions.

40. It adopted guidance for the long debated "Defence review", a strategic document and one of the key conditions for activating the NATO Membership Action Plan, and supported the Protocol on the European Union Stabilization and Association Agreement, a precondition for advancement on the European Union path. The Presidency also extended deployments of the Armed Forces of Bosnia and Herzegovina on peace missions in the Republic of Mali, the Democratic Republic of Congo and the Islamic Republic of Afghanistan, and adopted decisions on the destruction of malfunctioning ammunition and explosive ordnance.

41. In August, Chair of the Presidency of Bosnia and Herzegovina, Bakir Izetbegović, addressed a letter to the High Representative and the Ambassadors of the Steering Board of the Peace Implementation Council about the then-planned Republika Srpska referendum on "Republika Srpska Day", calling for international action to prevent what he characterized as the further destabilization of Bosnia and Herzegovina. The Croat Member of the Presidency, Mr. Čović, also wrote to my Office and the Ambassadors of the Steering Board in August on a separate issue, elaborating his claim that Croats have a disadvantaged position in the institutions in Bosnia and Herzegovina, particularly in the Federation, and calling the attention of the international community attention to that topic.

42. On 3 October, the Presidency adopted amendments to the Master Plan for the European Union Integration Process, which established non-binding timelines for implementing both the judgment of the European Court of Human Rights of 2009 in the case of *Sejdić and Finci v. Bosnia and Herzegovina* (application nos. 27996/06 and 34836/06) and the ruling of the Constitutional Court of Bosnia and Herzegovina of 2010 on the electoral system of the city of Mostar. According to the amendments, both rulings should be implemented in 2017.

B. Bosnia and Herzegovina Council of Ministers

43. The Bosnia and Herzegovina Council of Ministers met regularly during the reporting period, with European Union-related and economic issues dominating the agenda. On 9 September, the Council of Ministers of Bosnia and Herzegovina agreed on the adaptation of the European Union Stabilization and Association Agreement. The protocol envisages technical adjustments of provisions concerning trade of the Stabilization and Association Agreement. On 23 August the Council of Ministers of Bosnia and Herzegovina adopted the European Union coordination mechanism, defining both institutional and operational coordination, as well as joint bodies within the coordination system and their composition and competencies.

44. The Council of Ministers of Bosnia and Herzegovina adopted its midterm work plan for 2017-2019, as well as a progress report on the implementation of the action plan for measures related to the Reform Agenda for Bosnia and Herzegovina 2015-2018. The Council of Ministers of Bosnia and Herzegovina also adopted a salary policy focusing on limiting public spending, thereby meeting certain commitments from the Reform Agenda and the letter of intent to IMF.

C. Parliamentary Assembly of Bosnia and Herzegovina

45. Both Houses of the Bosnia and Herzegovina Parliamentary Assembly convened regularly during the reporting period, with the Bosnia and Herzegovina House of Representatives holding nine regular sessions and two urgent sessions, and the House of Peoples of Bosnia and Herzegovina holding five regular sessions and one urgent session. However, legislative output remained limited in quantity and in substance, even after the adoption of the progress report of the Council of Ministers of Bosnia and Herzegovina on implementing the Reform Agenda. During the reporting period, only 3 new laws and 10 amendments to existing legislation were fully adopted, while 22 laws were rejected, 7 of which were proposed by the Council of Ministers of Bosnia and Herzegovina, including the new Bosnia and Herzegovina Law on Ombudsman for Human Rights and amendments on new excise taxes, which the Bosnia and Herzegovina authorities had promised to adopt in their letter of intent to IMF.

46. Amendments proposed by Republika Srpska delegates to the Law on the Constitutional Court of Bosnia and Herzegovina and to the Bosnia and Herzegovina Criminal Code were rejected on 16 June.

47. On 27 April, the Parliamentary Assembly of Bosnia and Herzegovina adopted amendments to the *Bosnia and Herzegovina Election Law* in time for the Central Election Commission of Bosnia and Herzegovina to apply adopted changes for local elections for 2 October. The amendments were agreed in advance by an interagency working group established under the auspices of the Parliamentary Assembly of Bosnia and Herzegovina. However, all individual party proposals for amendments to the Bosnia and Herzegovina Election Law to enable elections in the city of Mostar failed owing to a lack of cross-party support.

48. During the reporting period, increasingly divisive rhetoric often brought discussions to a halt, particularly in relation to the publication of the 2013 census

results and the Republika Srpska referendum on the "Republika Srpska Day" holiday.

IV. Federation of Bosnia and Herzegovina

Federation Coalition Developments

49. On 26 July, disputes along ethnic lines in the majority SDA-HDZ Bosnia and Herzegovina-SBB Federation coalition over amendments to the *Law on Lotteries* resulted in the interruption and indefinite postponement of a scheduled session of the Federation House of Representatives. HDZ Bosnia and Herzegovina accused Bosniak delegates of outvoting Croat delegates in adopting the draft amendments, along with two other legislative items, including the long-overdue draft Federation Law on Forests, in an earlier session of the Federation House of Representatives. These disagreements led to a halt in sessions of the Federation House of Representatives until October, when the House met again to adopt measures required to secure IMF and other international loans.

50. The Federation House of Peoples also halted sessions following a dispute over proposed amendments designed to restore lost benefits to some 6,000 Croat war veterans, and did not meet again until October, also to adopt necessary decisions to secure international credit for the Federation.

51. Despite these setbacks in parliament, the Government of the Federation convened regularly during the reporting period, adopting 9 new laws and amendments to 15 existing laws. The Federation Parliament adopted 3 new laws and amendments to 4 existing laws.

Federation House of Peoples appoints Serb Deputy Speaker

52. On 23 June, more than a year and a half after the last general elections, the House of Peoples elected a Deputy Speaker, Drago Puzigaca (SNSD) from the ranks of the Serb people. He was elected with the support of only two votes in the Serb caucus and Serb caucus head Slavisa Sucur (Social Democratic Party (SDP)) complained that "someone else" (i.e., Bosniaks and Croats) had chosen the representative of the Serbs.

53. Nonetheless, the long-overdue appointment of the Serb Deputy Speaker was a welcome development, and followed months of engagement by the Office of the High Representative to secure an appointment.

Federation Constitutional Court suspends application of Federation Civil Service Law Amendments

54. On 28 June, the Constitutional Court suspended the application of amendments to the Federation Law on Civil Service related to appointments and dismissals of managers, whose constitutionality the Federation Vice-President has asked the court to review. Such appointments and dismissals remain frozen until a decision on the merits of the case is rendered.

Mostar again without local elections

55. On 2 October, residents of the city of Mostar were denied the right to participate in local elections with the rest of the country for the second time since the Constitutional Court struck down provisions of the Bosnia and Herzegovina Election Law related to Mostar in 2010, as local parties again failed to agree on amendments to fill the legal gap and allow for elections. The citizens of Mostar have not voted in local elections since 2008 and the city has been without an elected City Council since 2012.

56. In April, SDA President Izetbegović and HDZ Bosnia and Herzegovina President Čović tried and failed to reach an agreement on a joint proposal for Mostar, while the Bosnia and Herzegovina House of Representatives rejected four separate proposals submitted by various political groupings. On 4 May, the Central Election Commission of Bosnia and Herzegovina announced local elections in Bosnia and Herzegovina for 2 October, without the city of Mostar.

57. At its June meeting, the Political Directors of the Steering Board of the Peace Implementation Council "deplored the utter failure of the political parties over the past five-and-a-half years to meet their obligations to implement the ruling of the Constitutional Court of Bosnia and Herzegovina on the electoral system for Mostar, a Dayton requirement", and "called upon all parties, in particular SDA and HDZ Bosnia and Herzegovina, to reach a compromise by the beginning of July to allow voters in Mostar to exercise their basic right to vote for the first time in eight years".

V. Republika Srpska

58. During the reporting period, the ruling coalition led by the SNSD remained stable, with the Republika Srpska government meeting regularly. The Republika Srpska National Assembly held three regular and three special sessions, and adopted 9 new laws and 17 sets of amendments to existing laws.

59. The political situation in the Republika Srpska was greatly influenced by rising tensions between Sarajevo and Banja Luka over the referendum on the 9 January "Republika Srpska Day" holiday. The Republika Srpska opposition parties (Serb Democratic Party (SDS), Party of Democratic Progress (PDP) and the National Democratic Movement (NDP)) also supported the referendum decision, while complaining about the timing (just before municipal elections), which clearly advantaged SNSD in the polls.

60. On 13 July the Republika Srpska National Assembly adopted the Republika Srpska Law on Publishing Census Results, which provided for the Republika Srpska to publish separate census results in line with its own methodology. The law was published in the Republika Srpska official gazette on 23 September and entered into force on 1 October.

61. In the local elections of 2 October, the ruling SNSD polled strongly against the Republika Srpska opposition parties, with SDS losing 22 mayoral seats, including some traditional strongholds of the party. With its coalition partners, SNSD will now effectively control two-thirds of local administrations in the Republika Srpska.

Non-cooperation with the High Representative

62. As previously reported, I received several thousand postcards earlier this year, sponsored by the ruling SNSD party in relation to the "Republika Srpska Day", which was the subject of the 25 September referendum in violation of the General Framework Agreement for Peace. The postcards read: "High Representative, Go Home, Srpska continues to celebrate". Some 20 of these cards included death threats and these most serious cases were forward to the Bosnia and Herzegovina State Prosecutor, who has been investigating them.

63. The Republika Srpska authorities have continued to deny the High Representative access to official information and documents as required under annex 10 of the General Framework Agreement for Peace. Article IX of annex 10 obliges all authorities in Bosnia and Herzegovina to fully cooperate with the High Representative, as well as with the international organizations and agencies. Repeated calls by the Steering Board of the Peace Implementation Council reminding the Republika Srpska authorities of their obligations in this regard have had no impact. The practice of the Republika Srpska government not to provide information and documents as requested by the Office of the High Representative dates back to 2007, and contradicts frequent claims from the Republika Srpska that the entity respects the letter of the General Framework Agreement.

VI. International Tribunal for the Former Yugoslavia and war crimes prosecutions

64. During the reporting period, judicial authorities in Serbia began a procedure to decide on recognition of a Court of Bosnia and Herzegovina war crimes judgment in the case of Novak Djukic, a wartime commander in the Republika Srpska Army, who was sentenced to 20 years' imprisonment. In 2010, Djukic was sentenced to 25 years' imprisonment for war crimes against civilians for the 1995 shelling of the town of Tuzla. In 2014, the Constitutional Court of Bosnia and Herzegovina vacated the verdict and a new judgment sentencing him to 20 years. Djukic fled to Serbia and Bosnia and Herzegovina issued an international arrest warrant.

VII. Entrenching the rule of law

Draft law on Bosnia and Herzegovina Courts

65. The Ministry of Justice of Bosnia and Herzegovina prepared a new draft Law on Bosnia and Herzegovina Courts, without working group agreement on several important issues, including the provision regulating the criminal jurisdiction of the State of Bosnia and Herzegovina. As previously reported, the issue of the jurisdiction of the Court of Bosnia and Herzegovina has been a major point of contention between the Republika Srpska and other political authorities. The draft includes provisions for the State of Bosnia and Herzegovina to maintain its current criminal jurisdiction on, inter alia, organized crime and corruption, alongside alternate provisions reflecting the Republika Srpska view, which seeks restrictions on Bosnia and Herzegovina State jurisdiction. I have made it clear that the State-level jurisdiction must not be diminished, as it follows the division of competencies

between the State of Bosnia and Herzegovina and the entities under the Constitution of Bosnia and Herzegovina.

Non-execution of court judgments

66. The reporting period saw several very concerning challenges to the rule of law, which are covered in other sections of the present report. The referendum in the Republika Srpska on the decision of November 2015 of the Constitutional Court of Bosnia and Herzegovina conducted in violation of interim measures taken by the Constitutional Court sets a dangerous precedent for Bosnia and Herzegovina. The public statement by the President of the Republika Srpska that authorities would not execute the judgment of the Court of Bosnia and Herzegovina that establishes the ownership of the State of Bosnia and Herzegovina over a prospective defence location in Han Pijesak (in the Republika Srpska), and indeed the lack of its execution within the given deadline is another act of non-compliance against the State judicial institutions of Bosnia and Herzegovina and the rule of law in general. I have repeatedly warned about the damaging consequences of violating the legal and constitutional order of this country.

Summons of the President of the Republika Srpska in a criminal case related to the 25 September referendum

67. On 26 September, the Bosnia and Herzegovina Prosecutor's Office summoned the President of the Republika Srpska, Milorad Dodik (SNSD), for questioning as a suspect, over his role in the organization and conduct of the 25 September "Republika Srpska Day" referendum. Under article 239 of the Bosnia and Herzegovina Criminal Code, Failure to Enforce Decisions of the Constitutional Court of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina, the Human Rights Chamber and the European Court of Human Rights constitutes a criminal offence, with a sanction of six months' to five years' imprisonment. On 3 October, the President of the Republika Srpska refused to appear, calling the summons a politically orchestrated farce, after which the Bosnia and Herzegovina Prosecutor's Office confirmed it would send a second summons. In response, President Dodik repeated that he had no intention of coming to Sarajevo for questioning, saying he would be willing to provide a statement to the prosecutor anywhere in the Republika Srpska. Meanwhile, the Bosnia and Herzegovina Prosecutor's Office has extended its investigation into the organization and conduct of the Republika Srpska referendum to include other suspects.

Suspension of Bosnia and Herzegovina Chief Prosecutor on disciplinary charges

68. On 28 September, the Disciplinary Commission of the Bosnia and Herzegovina High Judicial and Prosecutorial Council suspended the Chief Prosecutor of Bosnia and Herzegovina while disciplinary proceedings for abuse of office are ongoing. The Office of the Disciplinary Prosecutor seeks permanent removal of the Chief Prosecutor for serious breach of duty in failing to recuse himself in cases where there was a conflict of interest, in having inappropriate contacts with judges and parties to proceedings, in enabling unqualified individuals to perform the duties of prosecutors, in interfering with the work of judges and prosecutors with an intention to obstruct, and in general seriously undermining the

public trust in the credibility of the Prosecutor's Office. The previous Deputy Chief Prosecutor for War Crimes took over as Acting Chief Prosecutor.

Entity anti-corruption efforts

69. In May, the Republika Srpska adopted a new Law on Repressing Corruption, Organized and Most Serious Forms of Economic Crime, introducing organizational changes within the Republika Srpska Prosecutor's Office.

70. In September, the Government of the Federation adopted the Strategy to Fight Corruption for 2016-2019, together with an action plan for its implementation. However, legislation of 2014 on a special prosecutors' department for fighting corruption and organized crime remains unimplemented. It is of special concern that, while this legislation entered into force in February 2015, it still cannot be applied, owing to operational prerequisites not being met. This creates legal uncertainty as to who has the competency to work on corruption and organized crime cases in the Federation. The Federation Supreme Court tried to bridge the situation with its decision that cases stay with the office(s) that were competent before the new legislation entered into force. There is a risk, however, that all investigations taken after 1 February 2015 might be found invalid, which might lead to impunity for all those cases.

VIII. Public security and law enforcement, including intelligence reform

71. The practice of political interference in operational policing remains the central challenge. The appointment in January 2015 of the Director of the Federal Police Administration remains unresolved owing to an ongoing court dispute over the validity of a previously conducted selection process. The appointments of new police commissioners in West Herzegovina Canton and Canton 10 are outstanding since April and December 2014, respectively, owing to attempts by local interested parties to lower the required criteria for the postings. Similarly, the appointments of independent selection boards have been delayed in Posavina Canton (2011), in Tuzla Canton (2014), and at the Federation level (2015). On 15 September, Central Bosnia Canton appointed a new police commissioner.

72. Una-Sana Canton adopted a new *Law on Internal Affairs* in August 2016, which is a positive development, joining Sarajevo Canton, Bosnian-Podrinje Canton, and the Federation level in enacting improved legislation that creates additional barriers to improper political influence. Tuzla Canton has delayed implementation of its new legislation owing to political interference.

73. The Republika Srpska *Law on Police and Internal Affairs* was formally adopted and entered into force in July, following the conclusion of the relevant procedures before the Constitutional Court of the Republika Srpska.

74. The Office of the High Representative continues to monitor changes to police legislation and to encourage harmonization in jurisdictions throughout the country. However, attempts to disharmonize the legislative frameworks are on the increase.

IX. Economy

75. The relevant Bosnia and Herzegovina institutions noted an increase in economic activity in Bosnia and Herzegovina in the first seven months of 2016 as compared with the same period in 2015. Exports increased by 1.8 per cent and imports decreased by 0.8 per cent. The coverage of imports over exports was 58.3 per cent, and the foreign trade deficit decreased by 4.1 per cent. Industrial production increased by 4 per cent, while price levels fell by 1 per cent. Unemployment fell by 4.2 per cent in July as compared with July 2015, with an administrative unemployment rate of 41.6 per cent. The World Bank estimated actual unemployment at 25.4 per cent and the share of youth unemployment in the total unemployment figure at 54.3 per cent.

76. Foreign direct investments (FDI) in the first quarter increased by 114.1 per cent, mostly owing to investments in the production of chemicals and chemical products, charcoal and oil derivatives, as well as in the financial sector. In July, the average net salary in Bosnia and Herzegovina amounted to 832 Bosnian Convertible Marka (BAM), a 0.6 per cent decrease, and the average pension amounted to BAM 359, a 0.2 per cent increase as compared with the same month in 2015. The minimal pension amounted to BAM 174 in the Republika Srpska and BAM 326 in the Federation (one BAM is approximately equal in value to 0.5 euros).

77. On 9 September, Standard and Poor's Ratings Services affirmed the credit rating of Bosnia and Herzegovina at "B with stable outlook". In the United Nations Conference on Trade and Development *World Investment Report 2016*, Bosnia and Herzegovina is ranked as fourth out of five South-East European countries by 2015 FDI inflows. In the Heritage Foundation 2016 Index of Economic Freedom, Bosnia and Herzegovina is ranked as 109th out of 178 countries globally (down from 97th place in 2015) and as 39th out of 43 countries in Europe (one place down from 2015). Bosnia and Herzegovina also fell from 78th to 91st place out of 159 countries and territories included in the *Economic Freedom of the World 2016 Annual Report*. In The World Economic Forum *Global Competitiveness Report 2016-2017* Bosnia and Herzegovina is ranked as 107th of 138 economies in terms of its competitiveness, which is four places up compared to the Report for 2015-2016.

78. The banking sector is assessed as generally stable and liquid. As part of the commitments of Bosnia and Herzegovina to IMF, external audits are under way in nine commercial banks in Bosnia and Herzegovina that were under enhanced supervision in 2015 or experienced rapid credit expansion. The consequences of the bankruptcy of two banks based in Republika Srpska (Bobar Banka and Banka Srpske), which triggered concerns over the health of the banking sector, were significantly mitigated by the State-level Deposit Insurance Agency, which handled reimbursements for insured depositors competently and efficiently.

Fiscal issues

79. Indirect tax revenues continued to grow, which is essential for fiscal stability at all levels of government in Bosnia and Herzegovina. In the first eight months of 2016, the Bosnia and Herzegovina Indirect Taxation Authority collected 2.7 per cent or BAM 113 million more than in the same period in 2015.

80. On 7 September, IMF approved a three-year Extended Fund Facility with Bosnia and Herzegovina in the total amount of approximately EUR 553.3 million, focusing on improving the business environment, reducing the size of government, improving the quality of spending, and safeguarding the financial sector. The IMF approval allowed for an immediate disbursement of approximately EUR 79.2 million to Bosnia and Herzegovina, while the remaining 11 disbursements are subject to quarterly reviews of progress on reforms.

81. The Federation receives two-thirds and the Republika Srpska one-third of the IMF disbursements under the Extended Fund Facility. The conclusion of the arrangement was initially hampered by delays in the completion of prior actions set by IMF, as well as delays in the signing of the letter of intent by the Chair of the Council of Ministers of Bosnia and Herzegovina, Denis Zvizdic, and the Prime Minister of the Federation of Bosnia and Herzegovina, Fadil Novalić (both SDA), who refused to sign the Letter of Intent until the Republika Srpska authorities agreed on the adaptation of the European Union Stabilization and Association Agreement with the European Union, the European Union coordination mechanism, and a number of State-level sectoral strategies.

82. The growth of indirect tax revenue, domestic borrowing and continued international financial assistance contributed to fiscal stability during the reporting period. Challenges in the period ahead may arise from foreign debt payment obligations. In 2017, foreign debt payments will increase by 23 per cent, following a 26 per cent increase in 2016.

83. The Ministry of Finance and Treasury of Bosnia and Herzegovina is in the process of finalizing the Draft Law on the Budget of Bosnia and Herzegovina Institutions and International Obligations of Bosnia and Herzegovina for 2017, which — based on the Global Framework of Fiscal Balance and Policies for 2017-2019 — is unlikely to show an increase for State institutions. The financing of State institutions has been locked at the same level since 2012 in terms of both the total amount (BAM 950 million) and the amount of indirect tax revenue (BAM 750 million), which comprises 78.9 per cent of total budget revenue. Other revenue sources for State institutions are limited. While these financial constraints do not pose a risk to the stability of the State institutions, they may hinder their ability to fully meet their obligations, especially now, as Bosnia and Herzegovina has taken the step of applying for European Union membership.

84. On 25 August, the Government of the Federation adopted the "Consolidated Report on Budget Execution for January-June 2016", which included the overall data for the Federation level, cantons, local self-government units, and extrabudgetary funds. Total revenues amounted to BAM 3.5 billion, which is a 4.7 per cent increase over the same period last year but a 6.9 per cent decrease as compared with the budget plan. Total expenditures amounted to BAM 3.2 billion, which is 4.8 per cent more than in 2015 but 7.6 per cent less than planned. During the reporting period the Government of the Federation raised BAM 219.9 million from the issuance of treasury bills and bonds to meet regular budgetary needs. The first IMF tranche earmarked for the Federation was not available, owing to political disputes within the Federation Parliament. The total funds from domestic and international borrowing planned in the 2016 Federation budget amount to BAM 712 million. The preparation of the 2017 Federation budget is under way.

85. The stability of the Federation Pension Fund raises concerns, with an accumulated deficit of some BAM 200 million, resulting from the grey economy, early retirement legislation, an increase in the number of pensioners, and poor collection of pension contributions. Borrowing from commercial banks was pursued as an interim solution to address delayed pension payments to some 408,000 pensioners in the Federation.

86. Fiscal challenges at the cantonal level stem mainly from accumulated deficits due to unaddressed spending problems from the past, a lack of willingness for reforms, and disputable decreases in distributions from the Federation government.

87. On 1 September, the Republika Srpska government adopted the Consolidated Report on Budget Execution for January-June 2016. The Report showed that budget revenues and expenditures totalled BAM 1.2 billion, 3 per cent less than planned. Financing of regular budgetary needs at the Republika Srpska government level was largely supported by domestic borrowing. Between January and mid-September, the Republika Srpska government raised BAM 408 million by issuing treasury bills and bonds. Additionally, on 12 September, the Republika Srpska government adopted the decision accepting the first IMF tranche in the amount of some BAM 52 million. Total funds from domestic and international borrowing planned in the 2016 Republika Srpska budget amounted to BAM 558.3 million.

88. Of concern in the Republika Srpska is the situation in the health sector, as well as pensions. In 2015, the Health Insurance Fund of Republika Srpska registered a deficit of BAM 84.3 million, while the country's health-care institutions accumulated debts of BAM 513 million. The Republika Srpska Ministry of Health and Social Welfare of the Republika Srpska announced cooperation with the World Bank and the United States Agency for International Development to rationalize the entity's health-care system. The Republika Srpska Pension Fund is also faced with challenges to its sustainability, resulting from, among other factors, poor revenue collection and an increased number of pensioners. The inclusion of the Republika Srpska Pension Fund in the 2016 Republika Srpska Budget addressed the problem of delayed pension payments to about 256,000 pensioners, but caused delays in other Republika Srpska budget payments.

International obligations

89. On 14 July, the Council of Ministers of Bosnia and Herzegovina adopted the Framework Transport Strategy of Bosnia and Herzegovina for 2016-2030 as a planning document. The adoption of the strategy opens the door to international financial support for the country's infrastructure projects. The strategy is based on entity and Brcko District strategic documents.

90. On 14 October, the Ministerial Council of the Energy Community suspended measures taken against Bosnia and Herzegovina in its 2015 session for persistent breaches of obligations arising from the Energy Community Treaty, particularly in relation to the gas sector. The suspension results from the agreement of 13 October whereby the relevant State and entity ministers committed to support the adoption of a State law addressing the identified breaches. If no such law is adopted by the end of March 2017, the measures against Bosnia and Herzegovina will be reintroduced automatically.

X. Return of refugees and displaced persons

91. Upholding the right of refugees and displaced persons to return to their pre-war homes remains central to the full implementation of annex 7 of the General Framework Agreement for Peace, which requires authorities at all levels to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.

92. The Republika Srpska referendum contributed to a general sense of unease between ethnic groups in mixed returnee communities in the Republika Srpska, especially in Srebrenica, where the Bosniak mayor refused to participate in the organization of the Republika Srpska referendum owing to its violation of an interim measure of the Constitutional Court of Bosnia and Herzegovina.

93. I remain concerned by the ongoing difficulties returnees face in the education sector in several local communities, in particular in relation to the use and name of official languages. In this context, I am particularly troubled by the non-compliance of the Republika Srpska with the ruling of the Constitutional Court of Bosnia and Herzegovina of 24 May on this issue.

XI. Media developments

94. The Bosnia and Herzegovina Public Broadcasting System (PBS) continued to face challenges in terms of financing and independence from inappropriate political influence. The temporary arrangement of financing public broadcasting through taxes collected by the three main telecom operators was extended in the summer, while a permanent financing solution has yet to be found. After considerable delays the public broadcasting services in Bosnia and Herzegovina have launched a test digital terrestrial signal in three centres (Sarajevo, Banja Luka and Mostar).

95. In April 2016, the Bosnia and Herzegovina Council of Ministers appointed Predrag Kovač as General Director of the Bosnia and Herzegovina Communications Regulatory Agency for a four-year term.

XII. Defence matters

96. On 27 June, the Bosnia and Herzegovina Presidency agreed on guidance to the Bosnia and Herzegovina Ministry of Defence regarding the Defence Review, and set a deadline of 30 November 2016 for its completion. Among other issues, the Bosnia and Herzegovina Presidency agreed on a compromise solution on the number of positions in the Armed Forces of Bosnia and Herzegovina. The Defence Review calls for the reduction of Armed Forces of Bosnia and Herzegovina from the current 10,000 active duty and 5,000 reserve positions to 9,200 active duty and 4,600 reserve positions upon the long-delayed activation of the NATO Membership Action Plan.

XIII. European Union military force

97. The European Union-led peacekeeping force in Bosnia and Herzegovina (EUFOR) continues to play an important role in supporting the efforts of Bosnia and Herzegovina to maintain a safe and secure environment. This assists my Office and other international organizations in fulfilling their respective mandates. The presence of EUFOR presence on the ground, including its liaison and observation teams, remains an important contributor to stability and security.

XIV. Future of the Office of the High Representative

98. The Political Directors of the Steering Board of the Peace Implementation Council met in Sarajevo on 7 and 8 June 2016 to underline the progress in implementing the General Framework Agreement for Peace, as well as their unequivocal commitment to the territorial integrity and sovereignty of Bosnia and Herzegovina. The Steering Board also emphasized the need to complete the 5 plus 2 agenda, which remains necessary for the closure of the Office of the High Representative. The next meeting of the Steering Board is scheduled for 6 and 7 December 2016 in Sarajevo.

99. Since my mandate began in March 2009, the budget of the Office of the High Representative has been reduced by over 46 per cent and my staff by over 51 per cent. Given these deep cuts, it is essential that I am equipped with the budget and staff required to carry out my mandate effectively, as I am entitled to under annex 10 of the General Framework Agreement for Peace.

XV. Reporting schedule

100. In keeping with the practice of submitting regular reports for onward transmission to the Security Council, as required under Council resolution 1031 (1995), I herewith present my sixteenth regular report. Should the Secretary-General or any Council member require further information at any time, I would be pleased to provide an additional written update. The next regular report to the Secretary-General is scheduled for April 2017.

Enclosure

Special report on a referendum in Republika Srpska against Bosnia and Herzegovina State constitutional court decisions

From the High Representative to the Secretary-General of the United Nations

21 October 2016

Summary

In my capacity as the final authority for the interpretation of the General Framework Agreement for Peace in Bosnia and Herzegovina, I wish to inform the Security Council of serious violations by the Republika Srpska of its obligations under the General Framework Agreement and, in particular, of the Constitution of Bosnia and Herzegovina as set forth in annex 4 thereof, through the holding of the referendum on 25 September on the territory of the Republika Srpska in disregard of final and binding decisions of the Constitutional Court of Bosnia and Herzegovina.

Despite the fact that, on 17 September, the Constitutional Court adopted an interim measure suspending the decision of 15 July 2016 by the Republika Srpska National Assembly to hold a referendum until the Constitutional Court adopts its final decision in a dispute concerning the said decision of the Republika Srpska National Assembly, the Republika Srpska conducted said referendum on 25 September, thereby violating a final and binding decision of the Court. The referendum asked Republika Srpska citizens whether they supported 9 January being observed and celebrated as "Republika Srpska Day".

In rejecting the applicability of the final and binding decisions of the Constitutional Court, both in explicit public statements and in conducting the referendum, the President of the Republika Srpska, Milorad Dodik, has acted outside the framework of the Constitution of Bosnia and Herzegovina and the General Framework Agreement for Peace.

This referendum follows the long-standing policy of the Republika Srpska of opting out of the judicial system of Bosnia and Herzegovina when it suits the entity leadership's political ends, and rejecting the sovereignty of the State and its key institutions, in particular by continued attacks against the highest Court in Bosnia and Herzegovina and its decisions.

In 2011, authorities of the Republika Srpska first decided to organize a referendum on the Bosnia and Herzegovina judiciary and the decisions of the High Representative's, with the aim of affirming this policy through a popular vote. Following high-level diplomatic efforts, the authorities of the Republika Srpska decided at that time not to hold the referendum. However, in 2015, despite the fact that the Structured Dialogue on Justice, between the European Union and Bosnia and Herzegovina a forum in which judicial issues were to be resolved, was established, the Republika Srpska authorities again decided to organize a referendum on the same issue. Even though the referendum was not held, the decision of 15 July 2015 to hold

such a referendum has never been withdrawn, nor was it published in the Republika Srpska official gazette. In other words, there are no legal impediments to holding this referendum and in fact the President of the Republika Srpska recently announced that it could be reactivated. I reported on this in further detail to the Security Council in my forty-eighth regular report on 11 September 2015 and in my special report on 4 September 2015.

The pattern of directly rejecting the authority and applicability of decisions of the Bosnia and Herzegovina State judicial institutions has not been confined to the mentioned referendums. For example, the Republika Srpska authorities have made statements indicating that they will ignore the decision of the Constitutional Court of 13 July 2012 relating to the ownership and distribution of publicly owned State property. The Constitutional Court clearly established that, under the relevant provisions of the Constitution of Bosnia and Herzegovina, the State of Bosnia and Herzegovina is the title holder of State property and that, pursuant to the Constitution of Bosnia and Herzegovina, Bosnia and Herzegovina has exclusive responsibility to regulate the issue of State property for which it holds title, while taking into account the needs of the entities. As a consequence there has been little progress on the issue of how State property assets are to be apportioned among the levels of government.

A more recent example of the Republika Srpska authorities directly rejecting the applicability of Bosnia and Herzegovina-level judicial decisions for the entity is the decision of the Court of Bosnia and Herzegovina on a prospective defence property location in Han Pijesak, located in the Republika Srpska, which is being ignored by the Republika Srpska authorities. In that case, the Republika Srpska has similarly refused to abide by a final order of 27 July issued by the State Court to register property in the name of the State of Bosnia and Herzegovina. In a statement given on 6 September 2016, the President of the Republika Srpska said that there will be no property registration, adding "the Republika Srpska National Assembly will decide on this matter very soon and I, as the President of the Republika Srpska, will issue an order not to register this because there are no grounds for this".[1] The deadline for the Republika Srpska Administration for Geodetic and Property-related Affairs to implement the Court decision expired as the present report was being finalized.

[1] "Ripping off part of Dayton Territory", *EuroBlic*, 6 September 2016.

Republika Srpska policy of opting out of the State judicial system

1. By organizing the entity referendum in direct contravention of the decision of the Constitutional Court, the Republika Srpska has affirmed its continued policy of questioning and disregarding the authority of the decisions of a key institution set up by the General Framework Agreement for Peace, the Constitutional Court, which is vested with the exclusive jurisdiction to resolve disputes between the levels of government that arise under the Constitution by its final and binding decisions.

2. The fact that, following the referendum, the President of the Republika Srpska, Milorad Dodik, of the Alliance of Independent Social Democrats (SNSD), ignored a summons by the Bosnia and Herzegovina Prosecutor for questioning in relation to his role in violating the Constitutional Court's interim measure, and has thus far refused to appear, constitutes further evidence of that policy.

3. I am particularly concerned about the fact that, by rejecting final and binding decisions of the Constitutional Court, and in particular the decision of the Court ordering interim measures, the Republika Srpska authorities have set a precedent by which they are to use referendums as a tool to justify violating their obligations under the General Framework Agreement for Peace, irrespective of any eventual decision(s) of the Constitutional Court. In that respect, the referendum organized by the Republika Srpska goes beyond the usual political rhetoric and pre-election campaign efforts by a political party, and beyond the issue of holidays, challenging the fundamentals of the General Framework Agreement as well as the sustainability of the structures established pursuant to the General Framework Agreement.

4. In addition to the above-mentioned attempt to organize a referendum on the Bosnia and Herzegovina judiciary and the HR powers, which falls outside the competencies of the Republika Srpska, the President of the Republika Srpska, Milorad Dodik has already mentioned the possibility of organizing a referendum on the membership of Bosnia and Herzegovina in the North Atlantic Treaty Organization (NATO). Furthermore, SNSD, the governing party in the Republika Srpska, led by the President of the Republika Srpska, has also made a referendum on secession in 2018 a part of its party platform.

5. For the reasons outlined above, I feel that these actions are destabilizing and seriously call into question the sustainability of efforts made to implement the civilian aspects of the General Framework Agreement for Peace.

Developments leading to the holding of a referendum on 25 September

Adoption of a decision by the National Assembly of the Republika Srpska to hold a referendum

6. On 15 July 2016, the Republika Srpska National Assembly adopted a decision to hold a referendum in the Republika Srpska on 25 September 2016. The Decision on Referendum provides that the referendum question posed to Republika Srpska citizens shall read as follows: "Do you support that 9 January be observed and celebrated as Republika Srpska Day?"

Decision of the Constitutional Court of Bosnia and Herzegovina on the Republika Srpska Law on Holidays

7. The referendum decision of the Republika Srpska National Assembly was a response to the decision of 26 November 2015 of the Constitutional Court decision on the same issue, in which the Constitutional Court granted the request of Member of the Presidency of Bosnia and Herzegovina, Bakir Izetbegović, for review of the constitutionality of article 3 (b) of the Republika Srpska Law on Holidays. In its decision, the Constitutional Court determined among others that the designation of 9 January as the Day of the Republic and the practice of celebrating the Day of the Republic on that date, violated a number of provisions of the Constitution of Bosnia and Herzegovina, in particular those relating to non-discrimination.[2] The Constitutional Court ordered the Republika Srpska National Assembly to harmonize the challenged provision of the Law with the Constitution of Bosnia and Herzegovina within six months following the delivery of the decision of the Constitutional Court to the Republika Srpska National Assembly and to inform the Constitutional Court on the measures taken to execute this decision.

8. Prior to that, on 17 April 2015, the Republika Srpska National Assembly had adopted a declaration regarding the Republika Srpska Law on Holidays, expressing its intent not to implement the then pending decision of the Constitutional Court if it did not support the publicly expressed Republika Srpska view, as well as its intent to review past decisions of the Constitutional Court. The Declaration questioned the presence of international judges on the Constitutional Court, as provided for in Article VI of the Constitution of Bosnia and Herzegovina, and the legitimacy of decisions taken by the Constitutional Court with those judges present. Also, the Declaration requested the Bosnia and Herzegovina Parliamentary Assembly to adopt a Law on the Bosnia and Herzegovina Constitutional Court, which would prescribe the composition, election, organization, jurisdiction and procedure, as well as other issues of relevance for the operation of the Constitutional Court.

9. On 23 November 2015, three days prior to the plenary session of the Constitutional Court, the President of the Republika Srpska, the Prime Minister of the Republika Srpska, and the Republika Srpska National Assembly Speaker signed a joint statement regarding the Republika Srpska Law on Holidays case stating, inter alia, that any decision of the Constitutional Court, which would go in the direction of annulling the Republika Srpska Law on Holidays would represent a political and not a legal decision and would not be enforceable on the territory of the Republika Srpska. They stated further that "neither the Constitutional Court nor any other court in the world can destroy the people's will as manifested in the decision of the Republika Srpska National Assembly to celebrate 9 January as Republic Day. On 9 January 1992, Republika Srpska was established, and it is quite natural that this day is celebrated as Republic Day".[3]

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[2] The Court determined that article 3 (b) of the challenged Law is not in accordance with article I/2 of the Constitution of Bosnia and Herzegovina, article II/4 of the Constitution of Bosnia and Herzegovina in conjunction with article 1.1, article 2, 1 (a) and (c) of the International Convention on the Elimination of All Forms of Racial Discrimination, or article 1 of Protocol No. 12 to the European Convention on Human Rights.

[3] "RS leadership: We will celebrate our day regardless of the Constitutional Court ruling." N1 online, 23 November 2015. Available from http://rs.n1info.com/a111798/Svet/Region/RS-ce-slaviti-Dan-Republike-bez-obzira-na-odluku-Ustavnog-suda-BiH.html.

10. On 29 November 2015, in response to the decision of 26 November of the Constitutional Court of Bosnia and Herzegovina on the Republika Srpska Law on Holidays, Republika Srpska political leaders signed a joint statement expressing their support for the aforementioned Republika Srpska National Assembly Declaration of 17 April 2015 regarding the Republika Srpska Law on Holidays. The statement further demanded the Parliamentary Assembly of Bosnia and Herzegovina to adopt within 120 days a Law on the Constitutional Court of Bosnia and Herzegovina, which would prescribe that the Constitutional Court would no longer have international judges in its membership. The statement also called on the Republika Srpska National Assembly to adopt a decision on holding a referendum, through which the Republika Srpska citizens would decide whether to accept the decision of 26 November of the Constitutional Court on the *Republika Srpska Law on Holidays*.[4]

11. On 20 June 2016, six days before the expiry of the deadline set by the Court for the Republika Srpska National Assembly to implement its decision, the Republika Srpska submitted to the Constitutional Court a request for review of its decision of 26 November 2015, submitting what they believed were facts that the Court had not known or considered when taking its decision.

Adoption by the Republika Srpska National Assembly of the decision to hold a referendum and reactions

12. On 15 July 2016, the Republika Srpska National Assembly adopted a decision to hold a referendum in the Republika Srpska on 25 September 2016. In the attached Reasoning to the referendum decision of the Republika Srpska National Assembly, the proponents referred to the selection of the date of 9 January 1992 as an indisputable historic and political fact, and further referred to both the declaration of 17 April 2015 of the Republika Srpska National Assembly and the statement of 29 November 2015 by Republika Srpska political leaders. I addressed both the declaration of 17 April 2015 and the statement of 29 November 2015 as challenges to the General Framework Agreement for Peace in my forty-seventh and forty-ninth reports to the UNSC.

13. I also made clear in my public statements that asking citizens in the Republika Srpska to declare themselves on an issue which has already been decided by the Constitutional Court of Bosnia and Herzegovina is a challenge to the General Framework Agreement for Peace and I called upon the Republika Srpska authorities to respect the fundamentals of the Agreement, and to seek a resolution of this issue in accordance with the law.

14. On 19 August, the Brcko District Supervisor informed the Brcko District Mayor that, pursuant to a Supervisory Order of 2007 that requires referendums on the Brcko District territory to be subject to the prior written consent of the Supervisor, he would not give his consent to holding the referendum within the Brcko District.

15. On 30 August 2016, the Ambassadors of the Steering Board of the Peace Implementation Council, with the exception of the Russian Federation, issued a

[4] "Joint statement dismisses ruling of Constitutional Court of Bosnia and Herzegovina", Srpska Republika News Agence (SRNA), 30 November 2015.

statement urging the Republika Srpska authorities not to hold the referendum. It stated:

> "The Constitution of Bosnia and Herzegovina states unambiguously that decisions of the Constitutional Court of Bosnia and Herzegovina are final and binding, and that the entities are bound to comply with the decisions of Bosnia and Herzegovina institutions. In this context, the proposed referendum in the Republika Srpska, by asking voters to declare themselves on a matter already decided by the Constitutional Court of Bosnia and Herzegovina, is destabilizing, and is creating political tensions, which are an unhelpful distraction from the very serious economic and social challenges facing Bosnia and Herzegovina. We urge the Republika Srpska authorities not to hold the referendum."

16. The same day, the President of the Constitutional Court of Bosnia and Herzegovina, Mirsad Ćeman, said in a broadcast interview that the Republika Srpska referendum was a politically motivated attempt to obstruct its authority through non legal means, explaining, "the use of these non-legal means, which were created through legal decisions such as the declaration and implementation of a referendum, is clear and direct political pressure on the Constitutional Court."[5]

17. Following a meeting in Belgrade with President Dodik and other Republika Srpska officials, the President of Serbia, Tomislav Nikolić, and the Prime Minister of Serbia, Aleksandar Vučić, issued a joint press release, in which they said that they did not extend their support for the Republika Srpska referendum, but "did not want in any way to facilitate a change of attitude of the legally elected officials of the Republika Srpska".[6]

18. On 1 September, the Central Election Commission of Bosnia and Herzegovina rejected a request from the Republika Srpska Referendum Commission for the lists of Republika Srpska voters from the Central Voters Register as unfounded and inadmissible. Consequently, the referendum was not held on the basis of an official voters register provided by the Central Election Commission.

19. On 2 September, the President of the Republika Srpska, Milorad Dodik, said, "There is the possibility that the referendum could be banned, or there may be a temporary injunction, but we will hold the referendum."[7]

Constitutional Court case on the holding of a referendum and decision on interim measures

20. In the period between 24 August and 3 September 2016, numerous officials in the institutions of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina submitted motions to the Constitutional Court seeking a resolution of the dispute with the Republika Srpska over its decision to organize a referendum on

[5] M.B., "Ceman: BiH Constitutional Court under direct political pressure", Federal News Agency of Bosnia and Herzegovina (FENA), 30 August 2016.

[6] "Nikolić and Vučić neither support nor reject the referendum decision", SRNA, 1 September 2016.

[7] "Dodik: It is possible referendum will be banned." N1 online, 2 September 2016. Available from http://rs.n1info.com/a190037/Svet/Region/Dodik-o-eventualnoj-zabrani-referenduma.html.

a matter previously adjudicated by the Court (in November 2015).[8] The applicants argued that the Republika Srpska National Assembly referendum decision challenging a Constitutional Court decision violated the Constitution of Bosnia and Herzegovina, and requested the Constitutional Court to put the Republika Srpska National Assembly referendum decision out of force, and to order the Republika Srpska National Assembly to annul all decisions and activities stemming from the referendum decision. They also asked the Constitutional Court to issue an interim measure to suspend the implementation of the referendum decision of the Republika Srpska National Assembly until the final ruling of the Constitutional Court on the constitutionality of the referendum decision.

21. At its plenary session of 17 September, the Constitutional Court rejected the request of 20 June by the Republika Srpska National Assembly for review of the November 2015 Constitutional Court decision. In rejecting the request by the Republika Srpska National Assembly, the Constitutional Court said that no new facts had been presented that would warrant a review.

22. On the same date the Court issued an interim measure suspending the referendum decision of the Republika Srpska National Assembly, pending the final decision of the Constitutional Court on the constitutionality of the referendum decision pursuant to the motions filed by Chair of the Presidency of Bosnia and Herzegovina, Mr. Izetbegović and members of the Bosnia and Herzegovina and Federation parliaments. The Constitutional Court noted that there was sufficient reason to suggest that conducting a referendum prior to the Constitutional Court's decision on these applications would cause serious and irreparable damage for the execution of its previous decision, for the smooth and efficient operation of the Constitutional Court in the particular case, and for the constitutional order in general. The Constitutional Court emphasized that the protection of the constitutional order and stability in Bosnia and Herzegovina are in the interest of all parties in this case.

Public statements and reactions in the week preceding the referendum

23. Public statements made in response to the decisions of 17 September of the Constitutional Court, contributed to tensions in the country. The President of the Republika Srpska said that he would not postpone the referendum, and added that the Constitutional Court did not have the authority to suspend a decision of the Republika Srpska National Assembly.[9]

24. Speaking at an SNSD campaign rally on the day of the session of the Constitutional Court, the President of the Republika Srpska said that "not even five ambassadors could convince me (to cancel the referendum). I did not expect any different behaviour from the political body that calls itself the Constitutional Court of Bosnia and Herzegovina. Having seen the repeatedly incorrect political decisions to the detriment of Serbs, nothing is surprising. I call on all citizens of the

[8] BiH Presidency Chair Izetbegovic, BiH House of Peoples Speaker, Safet Softic, Bosnia and Herzegovina House of Representatives First Deputy Speaker, Sefik Dzaferovic, 4 delegates in the Bosnia and Herzegovina House of Peoples, 25 members of the Bosnia and Herzegovina House of Representatives, 35 members of the Federation House of Representatives as well as 16 delegates to the Federation House of Peoples, all filed motions with the court.

[9] "There will be no postponing of referendum", SRNA, 17 September 2016.

Republika Srpska to vote in the referendum on 25 September. They cannot suspend our decision. Our decision can only be suspended by the Republika Srpska National Assembly, but the Republika Srpska National Assembly will not deliberate on the issue, and we will definitely hold the referendum".[10]

25. Just prior to the decisions of 17 September of the Constitutional Court of Bosnia and Herzegovina, SNSD Vice-President Nebojsa Radmanovic suggested in an interview that the "Republika Srpska Day" referendum could be a prelude to an eventual referendum on secession of Republika Srpska from Bosnia and Herzegovina. Referring to the SNSD Congress in April 2015, in which the party affirmed its stance on an independence referendum in 2018, Radmanovic said "the independence referendum does not have to be in 2018, as SNSD said in its congress, but it can be then. Many things can be changed, but it should not be hidden that the people think they should not be living in this kind of Bosnia and Herzegovina."[11]

26. Republika Srpska opposition leaders, however, partly expressed concern over the heightened tensions surrounding the referendum. The President of the Serb Democratic Party (SDS), Mladen Bosić, said that the Court's decision could create "a dangerous situation," and accused Dodik and Izetbegović of both using the referendum for political goals. The Serb member of the Presidency of Bosnia and Herzegovina, Mladen Ivanić, (Party of Democratic Progress (PDP)) noted: "We are currently in a complex political moment, and we will have a very serious political situation in the coming days. It is my obligation to ensure that the security aspect of this situation remains under control."[12]

27. Tensions further increased owing to the comments on 19 September by wartime Army of the Republic of Bosnia and Herzegovina Commander (currently the president of BPS and a delegate in the Bosnia and Herzegovina House of Representatives), Sefer Halilović, who warned in a television interview that in the event of a return to war the Republika Srpska would be defeated quickly. Halilović said, "... citizens need to know that on the territory of Bosnia and Herzegovina there is no longer the Yugoslav People's Army, with its five, or almost six thousand pieces of heavy artillery. There aren't 200,000 Chetniks armed to their teeth. That Serbia cannot help any more. There is no Yugoslavia. There is no Tudjman-Milosevic deal on partitioning of Bosnia and Herzegovina any more. Montenegro has seceded, and the Republika Srpska, in its parameters, could be maintained for only 10 to 15 days in a conflict. My plea is that it's better to talk for a hundred years than to go to war for one day. If they put us in a situation that they secede from Bosnia and Herzegovina, they should know that it would not pass peacefully".[13]

[10] Milorad Dodik, telephone interview for N1 central news programme "Dnevnik u 19", 17 September 2016. Available from https://youtu.be/aMeLc4BHCY4?t=6m3s.

[11] Žarko Marković, "Former BiH Presidency member on referendum: if we fail to preserve January 9, they will strike at Srpska's name," interview with Nebojša Radmanović in *Nedeljnik*, 15 September 2016. Available from http://novinedeljnik.edeja.com/nedeljnik/portalnews/bivsi-clan-predsednistva-bih-o-referendumu-ako-ne-sacuvamo-deveti-januar-udarice-i-na-ime-srpske/.

[12] Mladen Ivanić, pre-recorded statement aired on BN Televizija (BNTV) central news programme "Dnevnik 2", 18 September 2016. Available from https://youtu.be/KayY9krQ1ME?t=2m43s.

[13] Sefer Halilović, interview by Nikolina Veljović, "Dnevnik u 19," TV1, 19 September 2016. Available from https://youtu.be/qL7j2DCftW4?t=4m14s.

28. In response, President Dodik said that any new conflict would accelerate the Republika Srpska path to independence, stating, "if any move of that sort takes place, we are out of Bosnia and Herzegovina at that very moment."[14]

29. The Minister of Foreign Affairs of Serbia, Ivica Dačić, also reacted to Halilović's provocative comments, warning, "Serbia is strong enough to defend itself, and will not allow the destruction of the Republika Srpska if attacked."[15]

30. On 20 September 2016, the Ambassadors of the Steering Board of the Peace Implementation Council, with the exception of the Russian Federation, issued a second statement, in which they emphasized that decisions taken by the Constitutional Court of Bosnia and Herzegovina must be respected and noted "that on 17 September, the Constitutional Court of Bosnia and Herzegovina decided to suspend the decision on the referendum adopted by the Republika Srpska National Assembly until the Court decides on its constitutionality. There is therefore no legal basis for the Republika Srpska to hold an entity-wide referendum on September 25. We once again urge the Republika Srpska authorities not to hold the referendum."

31. On the eve of the Republika Srpska referendum, Dodik told media in Banja Luka that the Republika Srpska would also hold a referendum on the accession of Bosnia and Herzegovina to NATO, telling journalists, "If the people in the Republika Srpska, which was bombed by NATO, decide that they want (to join NATO), I have nothing against it. But the people will be asked".[16]

Holding of the referendum

32. On 25 September, the Republika Srpska authorities conducted a referendum on the territory of the Republika Srpska in line with the referendum decision of 15 July of the Republika Srpska National Assembly, in direct contravention of the interim measure of 17 September issued by the Constitutional Court.

33. On 11 October, the Republika Srpska National Assembly considered the report of the Republika Srpska Referendum Commission on the "Republika Srpska Day" referendum held on 25 September. Despite the clear requirement provided under the Republika Srpska Constitution that acts taken in the Republika Srpska National Assembly need also to be considered by the Republika Srpska Council of Peoples for an eventual vital national interest procedure before they can be considered adopted and in force, the Republika Srpska National Assembly decision determining the referendum results on the basis of the considered Republika Srpska Referendum Commission report, together with additional decisions of the Republika Srpska National Assembly concerning the Republika Srpska Referendum Commission, were published in the Republika Srpska official gazette on 12 October. This was done without giving the Republika Srpska Council of Peoples the time prescribed

[14] Milorad Dodik, interview by Ljubinka Milinčić, Sputnik Serbia, 21 September 2016. Available from https://youtu.be/8EtpY0_v_u8.

[15] "Srbija will not allow a military attack and destruction of the Republika Srpska", SRNA, 20 September 2016.

[16] Milorad Dodik, interview by Mirjana Hrga, RTL Croatia, 24 September 2016. Transcript available from http://pressrs.ba/vijesti/video-dodik-u-intervjuu-sa-urednicom-rtl-ovaj-entitet-ima-volju-da-prezivi-i-ce-ostati-24-09-1.

under the Republika Srpska Constitution to raise it as a matter of vital national interest.

34. In accordance with the Republika Srpska Law on Referendum and Citizens' Initiative, the Republika Srpska National Assembly is obliged to pass the relevant acts implementing the referendum results within a deadline of six months following the day of the referendum.

Refusal by the Republika Srpska to register property in the name of the Bosnia and Herzegovina State as ordered by the Court of Bosnia and Herzegovina

35. Fundamentally, I view the holding of the referendum on 25 September, against a direct order of the Constitutional Court of Bosnia and Herzegovina, to be a failure to respect the rule of law and the validity of the decisions of Bosnia and Herzegovina-level judicial institutions. In this regard, I also wish to highlight the previously mentioned refusal by the Republika Srpska authorities to implement a decision by the Court of Bosnia and Herzegovina with regard to the registration of a piece of defence property, as it suggests a larger, more insidious pattern. As with the referendum on the "Republika Srpska Day" holiday it is not so much the specific issue addressed by the court that concerns me, but the open defiance of the applicability of the decisions of courts with which the Republika Srpska authorities disagree.

36. By way of background, on 27 July 2016, the Appellate Division of the State Court rendered its second-instance judgment in the property dispute between the State of Bosnia and Herzegovina and the Republika Srpska regarding the prospective defence location "Veliki Zep" in Han Pijesak, in the Republika Srpska. In the judgment, the State Court upheld the first-instance judgment from 3 July 2015 in the part establishing the right of ownership of the State of Bosnia and Herzegovina over said property and directed the Republika Srpska Administration for Geodetic and Property-Related Legal Affairs to register the ownership of the property to the State of Bosnia and Herzegovina. The judgment stipulated that the Republika Srpska shall meet all obligations stemming from the judgment within 30 days of the day of receiving the second instance verdict.

37. One of the first public reactions came from the Republika Srpska Public Attorney's Office, which officially announced that it would request a revision of the decision of the State Court, and file an appeal with the Constitutional Court, demanding that the implementation of the decision be put on hold until the State Court reached a decision on the requested revision. It should be explained that, as such, the second-instance judgment of the State Court is final and subject to enforcement. Although there are certain extraordinary legal remedies, the use of these legal remedies, per se, does not stay the enforcement of the final judgment.

38. On 27 August, the President of the Republika Srpska publicly rejected the Court's decision, saying "The Court that was formed outside the provisions of a constitution violates the [Bosnia and Herzegovina] Constitution, since it is a fact that property in Bosnia and Herzegovina was divided by the Dayton Peace Agreement, which clearly stipulates that what is explicitly given to Bosnia and Herzegovina actually belongs to Bosnia and Herzegovina and that everything else has to be agreed by the parties. Such a deal has never existed, while the [State] Court continues to pass rulings. This is violence ... I think we are approaching a

moment when the Republika Srpska will pass its own law and say that it will no longer implement decisions of the Bosnia and Herzegovina [State] Court, as it did not turn out to be a place of justice, but a place of injustice".[17]

Additional considerations

39. I would kindly refer you to my special report of 4 September 2015, in which I carefully catalogued the longstanding policy of the ruling Republika Srpska authorities, and in particular the current President of the Republika Srpska, to undermine the authorities of the State of Bosnia and Herzegovina and to openly advocate for the secession of Republika Srpska and State dissolution. I have documented this trend of challenges to the fundamentals of the General Framework Agreement for Peace, including the territorial integrity and sovereignty of Bosnia and Herzegovina, extensively in my regular biannual reports to the Secretary-General.

40. In this context, I would remind you that the Republika Srpska National Assembly took similar steps to organize a referendum on the State-level judiciary in April 2011, when it adopted a decision on a referendum as well as a series of conclusions challenging the High Representative and his authorities, as well as all decisions and laws enacted by the High Representative pursuant to his mandate, and the authority of key State-level institutions. While the 2011 referendum initiative was subsequently repealed by the Republika Srpska National Assembly, following the intervention of the then European Union High Representative for Foreign Affairs and Security Policy, the conclusions of 2011 of the Republika Srpska National Assembly have remained in force.

41. On the issue of secession, it is worth mentioning the Declaration of April 2015 issued by SNSD, the ruling political party in the Republika Srpska. In this party document, SNSD clarified its political agenda as working to focus on the status of the Republika Srpska as an "independent State within its current borders" and condemned the alleged usurpation of its competencies by "the legal violence of the Office of the High Representative." In this same document, SNSD stated the party's intention to organize a separate referendum on the independence of the Republika Srpska in 2018 if the party's conditions relating to the distribution of competencies between the entities and the State of Bosnia and Herzegovina are not met by 2017.

Conclusion

42. The referendum held by the Republika Srpska entity authorities on 25 September, against a direct order of the Constitutional Court of Bosnia and Herzegovina, has had serious and negative political repercussions and led to a marked increase in tense rhetoric on all sides, including in some cases references to the potential for renewed conflict. Politically speaking, the 9 January holiday commemorates the pre-Dayton founding of the Republika Srpska at the start of the war in 1992, and the referendum is viewed by observers on both sides as a possible prelude to a referendum on the legal status of the Republika Srpska for the Republika Srpska. Beyond these political tensions, I remain concerned by the

[17] "Court of Bosnia and Herzegovina taking away military property in Srpska", *Glas Srpske*, 26 August 2016, p. 2.

precedent set by the Republika Srpska authorities, in particular the President of the Republika Srpska, by openly defying the authority of the Constitutional Court of Bosnia and Herzegovina to review the constitutionality of legal acts adopted by the entities.

43. I have repeatedly emphasized the importance of the Constitutional Court as an institution responsible for resolving disputes between levels of government. In the light of the international community's policy of relying on domestic institutions, I believe that the Constitutional Court's jurisdiction is of the utmost importance. Following the eventual departure of the High Representative, the Court will be the only domestic body which has broad powers to decide on disputes arising under the Constitution between the entities, between Bosnia and Herzegovina and an entity or between institutions of Bosnia and Herzegovina. Developments in Bosnia and Herzegovina over the last five years have shown that these disputes are likely to be more, and not less, frequent.

44. The Constitutional Court of Bosnia and Herzegovina has played and continues to play a very positive role in strengthening the institutions of Bosnia and Herzegovina and ensuring respect for the rule of law over the last 15 years. In a complex institutional landscape, where challenges to institutions are frequent, particularly at the State level, including institutions established to implement the Peace Agreement and to enable Bosnia and Herzegovina to progress towards European Union and NATO membership, its role will continue to increase in importance.

45. The rule of law is a crucial tenet of the General Framework Agreement for Peace. If the current course of action initiated by the Republika Srpska authorities remains unchecked, there will be an increased risk that Bosnia and Herzegovina will slide further towards disintegration and legal anarchy, which could have significant international peace and security implications.

46. For those reasons, I am duty-bound to conclude that the Republika Srpska has effectively opted out of the judicial system of the Bosnia and Herzegovina State, and thus has fundamentally rejected the sovereignty of Bosnia and Herzegovina. These actions seriously call into question the durability of the implementation of the civilian aspects of the General Framework Agreement for Peace and represent a direct threat to international peace and security.